

1 SENATE BILL 440

2 **49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

3 INTRODUCED BY

4 Peter Wirth

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10 AN ACT

11 RELATING TO TAXATION; PROVIDING FOR THE SALE, EXCHANGE OR  
12 TRANSFER OF INCOME TAX CREDIT THAT MAY BE CLAIMED FOR  
13 PRESERVATION OF CULTURAL PROPERTY; INCREASING THE CREDIT.

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15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 Section 1. Section 7-2-18.2 NMSA 1978 (being Laws 1984,  
17 Chapter 34, Section 1, as amended) is amended to read:

18 "7-2-18.2. CREDIT FOR PRESERVATION OF CULTURAL PROPERTY--  
19 [~~REFUND~~] PERSONAL INCOME TAX CREDIT.--

20 A. Tax credits for the preservation of cultural  
21 property may be claimed as follows:

22 (1) to encourage the restoration,  
23 rehabilitation and preservation of cultural properties, a  
24 taxpayer who files an individual New Mexico income tax return  
25 and who is not a dependent of another individual and who is the

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1 owner of a cultural property listed on the official New Mexico  
2 register of cultural properties, with the taxpayer's consent,  
3 may claim a credit not to exceed a maximum aggregate of  
4 [~~twenty-five thousand dollars (\$25,000)~~] fifty thousand dollars  
5 (\$50,000) in an amount equal to one-half of the cost of  
6 restoration, rehabilitation or preservation of a cultural  
7 property listed on the official New Mexico register; or

8 (2) if a cultural property, whose owner may  
9 otherwise claim the credit set forth in Paragraph (1) of this  
10 subsection is also located within an arts and cultural district  
11 certified by the state or a municipality pursuant to the Arts  
12 and Cultural District Act, the owner of that cultural property  
13 may claim a credit not to exceed [~~fifty thousand dollars~~  
14 ~~(\$50,000)~~] seventy-five thousand dollars (\$75,000), including  
15 any credit claimed pursuant to Paragraph (1) of this  
16 subsection, in an amount equal to one-half of the cost of  
17 restoration, rehabilitation or preservation of the cultural  
18 property.

19 B. The taxpayer may claim the credit if:

20 (1) the taxpayer submitted a plan and  
21 specifications for restoration, rehabilitation or preservation  
22 to the committee and received approval from the committee for  
23 the plan and specifications prior to commencement of the  
24 restoration, rehabilitation or preservation;

25 (2) the taxpayer received certification from

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1 the committee after completing the restoration, rehabilitation  
2 or preservation, or committee-approved phase, that it conformed  
3 to the plan and specifications and preserved and maintained  
4 those qualities of the property that made it eligible for  
5 inclusion in the official register; and

6 (3) the project is completed within twenty-  
7 four months of the date the project is approved by the  
8 committee in accordance with Paragraph (1) of this subsection.

9 C. A taxpayer may claim the credit provided in this  
10 section for each taxable year in which restoration,  
11 rehabilitation or preservation is carried out. Except as  
12 provided in Subsection F of this section, claims for the credit  
13 provided in this section shall be limited to three consecutive  
14 years, and the maximum aggregate credit allowable shall not  
15 exceed [~~twenty-five thousand dollars (\$25,000)~~] fifty thousand  
16 dollars (\$50,000) if governed by Paragraph (1) of Subsection A  
17 of this section, or [~~fifty thousand dollars (\$50,000)~~] seventy-  
18 five thousand dollars (\$75,000) if governed by Paragraph (2) of  
19 Subsection A of this section, for any single restoration,  
20 rehabilitation or preservation project for any cultural  
21 property listed on the official New Mexico register certified  
22 by the committee.

23 D. A husband and wife who file separate returns for  
24 a taxable year in which they could have filed a joint return  
25 may each claim only one-half of the credit that would have been

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1 allowed on a joint return.

2 E. A taxpayer who otherwise qualifies and claims a  
3 credit on a restoration, rehabilitation or preservation project  
4 on property owned by a partnership of which the taxpayer is a  
5 member may claim a credit only in proportion to the taxpayer's  
6 interest in the partnership. The total credit claimed by all  
7 members of the partnership shall not exceed [~~twenty-five~~  
8 ~~thousand dollars (\$25,000)] fifty thousand dollars (\$50,000) in  
9 the aggregate if governed by Paragraph (1) of Subsection A of  
10 this section, or [~~fifty thousand dollars (\$50,000)] seventy-  
11 five thousand dollars (\$75,000) in the aggregate if governed by  
12 Paragraph (2) of Subsection A of this section, for any single  
13 restoration, rehabilitation or preservation project for any  
14 cultural property listed on the official New Mexico register  
15 certified by the committee.~~~~

16 F. The credit provided in this section may only be  
17 deducted from the taxpayer's income tax liability. Any portion  
18 of the maximum tax credit provided by this section that remains  
19 unused at the end of the taxpayer's taxable year may be carried  
20 forward for four consecutive years; provided, however, the  
21 total tax credits claimed under this section shall not exceed  
22 [~~twenty-five thousand dollars (\$25,000)] fifty thousand dollars  
23 (\$50,000) if governed by Paragraph (1) of Subsection A of this  
24 section, or [~~fifty thousand dollars (\$50,000)] seventy-five  
25 thousand dollars (\$75,000) if governed by Paragraph (2) of~~~~

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1 Subsection A of this section, for any single restoration,  
2 preservation or rehabilitation project for any cultural  
3 property listed on the official New Mexico register.

4 G. To receive a credit pursuant to this section, a  
5 person shall apply to the department on forms and in the manner  
6 prescribed by the department. The application shall include a  
7 certificate of eligibility issued by the committee pursuant to  
8 Subsection B of this section. If all of the requirements of  
9 this section have been complied with, the department shall  
10 issue to the applicant a document granting the tax credit. The  
11 document shall be numbered for identification and declare its  
12 date of issuance and the amount of the tax credit allowed for  
13 the preservation of cultural property pursuant to this section.

14 H. The tax credit represented by a document issued  
15 by the department pursuant to Subsection G of this section, or  
16 an increment of that tax credit, may be sold, exchanged or  
17 otherwise transferred and may be carried forward for a period  
18 of four taxable years following the taxable year in which the  
19 credit originated until fully expended. A tax credit or  
20 increment of a tax credit may be transferred only once. The  
21 credit may be transferred to any taxpayer. A taxpayer to whom  
22 a credit has been transferred may use the credit for the  
23 taxable year in which the transfer occurred and unused amounts  
24 may be carried forward to succeeding taxable years, but in no  
25 event may the transferred credit be used more than five years

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1 after it was originally issued.

2 I. A taxpayer who has transferred a tax credit  
3 issued pursuant to this section shall notify the department of  
4 the transfer and of the date of the transfer within thirty days  
5 of the transfer. Credits shall be transferred only in  
6 increments of three thousand dollars (\$3,000) or more. The  
7 department shall keep an account of the credits.

8 [~~G.~~] J. The historic preservation division shall  
9 promulgate regulations for the implementation of Subsection B  
10 of this section.

11 [~~H.~~] K. As used in this section:

12 (1) "committee" means the cultural properties  
13 review committee created in Section 18-6-4 NMSA 1978; and

14 (2) "historic preservation division" means the  
15 historic preservation division of the cultural affairs  
16 department created in Section 18-6-8 NMSA 1978."

17 Section 2. Section 7-2A-8.6 NMSA 1978 (being Laws 1984,  
18 Chapter 34, Section 2, as amended) is amended to read:

19 "7-2A-8.6. CREDIT FOR PRESERVATION OF CULTURAL PROPERTY--  
20 CORPORATE INCOME TAX CREDIT.--

21 A. Tax credits for the preservation of cultural  
22 property may be claimed as follows:

23 (1) to encourage the restoration,  
24 rehabilitation and preservation of cultural properties, a  
25 taxpayer that files a corporate income tax return and that is

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1 the owner of a cultural property listed on the official New  
2 Mexico register of cultural properties, with its consent, may  
3 claim a credit not to exceed [~~twenty-five thousand dollars~~  
4 ~~(\$25,000)~~] one hundred twenty-five thousand dollars (\$125,000)  
5 in an amount equal to [~~one-half~~] twenty percent of the cost of  
6 restoration, rehabilitation or preservation of the cultural  
7 property; or

8 (2) if a cultural property, whose owner may  
9 otherwise claim the credit set forth in Paragraph (1) of this  
10 subsection is also located within an arts and cultural district  
11 designated by the state or a municipality pursuant to the Arts  
12 and Cultural District Act, the owner of that cultural property  
13 may claim a credit not to exceed [~~fifty thousand dollars~~  
14 ~~(\$50,000)~~] two hundred fifty thousand dollars (\$250,000),  
15 including any credit claimed pursuant to Paragraph (1) of this  
16 subsection, in an amount equal to [~~one-half~~] twenty percent of  
17 the cost of restoration, rehabilitation or preservation of the  
18 cultural property.

19 B. The taxpayer may claim the credit if:

20 (1) it submitted a plan and specifications for  
21 restoration, rehabilitation or preservation to the committee  
22 and received approval from the committee for the plan and  
23 specifications prior to commencement of the restoration,  
24 rehabilitation or preservation;

25 (2) it received certification from the

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1 committee after completing the restoration, rehabilitation or  
2 preservation, or committee-approved phase, that it conformed to  
3 the plan and specifications and preserved and maintained those  
4 qualities of the property that made it eligible for inclusion  
5 in the official register; and

6 (3) the project is completed within twenty-  
7 four months of the date the project is approved by the  
8 committee in accordance with Paragraph (1) of this subsection.

9 C. A taxpayer may claim the credit provided in this  
10 section for each taxable year in which preservation,  
11 restoration or rehabilitation is carried out. Claims for the  
12 credit provided in this section shall be limited to three  
13 consecutive years, and the maximum aggregate credit allowable  
14 shall not exceed [~~twenty-five thousand dollars (\$25,000)~~] one  
15 hundred twenty-five thousand dollars (\$125,000) if governed by  
16 Paragraph (1) of Subsection A of this section, or [~~fifty~~  
17 ~~thousand dollars (\$50,000)~~] two hundred fifty thousand dollars  
18 (\$250,000) if governed by Paragraph (2) of Subsection A of this  
19 section, for any single restoration, rehabilitation or  
20 preservation project certified by the committee for any  
21 cultural property listed on the official New Mexico register.  
22 No single project may extend beyond a period of more than two  
23 years.

24 D. A taxpayer who otherwise qualifies and claims a  
25 credit on a restoration, rehabilitation or preservation project

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1 on property owned by a partnership of which the taxpayer is a  
2 member may claim a credit only in proportion to the taxpayer's  
3 interest in the partnership. The total credit claimed by all  
4 members of the partnership shall not exceed [~~twenty-five~~  
5 ~~thousand dollars (\$25,000)~~] one hundred twenty-five thousand  
6 dollars (\$125,000) if governed by Paragraph (1) of Subsection A  
7 of this section, or [~~fifty thousand dollars (\$50,000)~~] two  
8 hundred fifty thousand dollars (\$250,000) if governed by  
9 Paragraph (2) of Subsection A of this section, in the aggregate  
10 for any single restoration, preservation or rehabilitation  
11 project for any cultural property listed on the official New  
12 Mexico register approved by the committee.

13 E. The credit provided in this section may only be  
14 deducted from the taxpayer's corporate income tax liability.  
15 Any portion of the maximum tax credit provided by this section  
16 that remains unused at the end of the taxpayer's taxable year  
17 may be carried forward for four consecutive years; provided,  
18 however, the total tax credits claimed under this section shall  
19 not exceed [~~twenty-five thousand dollars (\$25,000)~~] one hundred  
20 twenty-five thousand dollars (\$125,000) if governed by  
21 Paragraph (1) of Subsection A of this section, or [~~fifty~~  
22 ~~thousand dollars (\$50,000)~~] two hundred fifty thousand dollars  
23 (\$250,000) if governed by Paragraph (2) of Subsection A of this  
24 section, for any single restoration, rehabilitation or  
25 preservation project for any cultural property listed on the

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1 official New Mexico register.

2 F. To receive a credit pursuant to this section, a  
3 taxpayer shall apply to the department on forms and in the  
4 manner prescribed by the department. The application shall  
5 include a certificate of eligibility issued by the committee  
6 pursuant to Subsection B of this section. If all of the  
7 requirements of this section have been complied with, the  
8 department shall issue to the applicant a document granting the  
9 tax credit. The document shall be numbered for identification  
10 and declare its date of issuance and the amount of the tax  
11 credit allowed for the preservation of cultural property  
12 pursuant to this section.

13 G. The tax credit represented by a document issued  
14 by the department pursuant to Subsection F of this section, or  
15 an increment of that tax credit, may be sold, exchanged or  
16 otherwise transferred and may be carried forward for a period  
17 of nineteen taxable years following the taxable year in which  
18 the credit originated until fully expended. A tax credit or  
19 increment of a tax credit may be transferred only once. The  
20 credit may be transferred to any corporate taxpayer. A  
21 taxpayer to whom a credit has been transferred may apply the  
22 credit against its corporate tax liability for the taxable year  
23 in which the transfer occurred and unused amounts may be  
24 carried forward to succeeding taxable years, but in no event  
25 may the transferred credit be used more than twenty years after

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1 it was originally issued.

2 H. A taxpayer who has transferred a tax credit  
3 issued pursuant to this section shall notify the department of  
4 the transfer and of the date of the transfer within thirty days  
5 of the transfer. Credits shall be transferred only in  
6 increments of three thousand dollars (\$3,000) or more. The  
7 department shall keep an account of the credits.

8 [~~F.~~] I. The historic preservation division shall  
9 promulgate regulations for the implementation of this section.

10 [~~G.~~] J. As used in this section:

11 (1) "committee" means the cultural properties  
12 review committee created in Section 18-6-4 NMSA 1978; and

13 (2) "historic preservation division" means the  
14 historic preservation division of the cultural affairs  
15 department created in Section 18-6-8 NMSA 1978."

16 Section 3. APPLICABILITY.--The provisions of this act  
17 apply to tax credits claimed that are for the projects for  
18 preservation activity receiving written approval by the  
19 cultural properties review committee created in Section 18-6-4  
20 NMSA 1978 on or after January 1, 2010.

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